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Supreme Court, U.S.
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CASE NO. 03-224 (02-920)

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2003

LAWRENCE MOORE,

Petitioner,

v.

LOCAL UNION NO. 58, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; LOCAL 58 ANNUITY FUND; LOCAL 58 PENSION TRUST; LOCAL 58 HEALTH WELFARE TRUST; LOCAL 58 TRAINING TRUST; LABOR-MANAGEMENT CO-OP FUND; LOCAL 58 SUB PAY FUND; LOCAL 58 VACATION PAY FUND; JEFF RADJEWSKI; ELECTRICAL WORKERS JOINT BOARD OF TRUSTEES; THOMAS MITTELBRUN; NATIONAL ELECTRICAL BENEFIT FUND; and NATIONAL ELECTRICAL ANNUITY FUND,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING

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I. STATEMENT OF GROUNDS FOR REHEARING

Defendant Local Union violated the Constitution with "takings" from Plaintiff's earned wages *via* the "compulsory union" practices that Congress enacted the Labor Management Relations Act (the "Paycheck Protection Law") ("LMRA") to prevent. Union abused "dual roles" as the "exclusive representative" of all electricians in a "Bargaining Unit," and administrator of "job referral procedures" created by a collective bargaining agreement ("CBA") between the Bargaining Unit and employers to take his property for its ostensible "Union dues" and "special purpose Funds."

Ironically, Union was "certified" as the CBA Bargaining Unit's "exclusive representative" by that very same law, LMRA § 158(a)(3), and it has stolen $million$, perhaps $billion$, from non-members in that Bargaining Unit it selectively "represents," while at the same time ensuring that membership in the Union was not available to such non-members "on the same terms" as its members in violation of LMRA § 158(a)(3)(A) and (B), and § 158(f). Its "takings" also subverted the Davis Bacon Act, and the Internal Revenue Code.[1/]

From 1998-2000 Plaintiff, an electrician, accepted jobs with electrical contractors that had "collective bargaining agreements" ("CBA") with four "local unions" in Michigan, Ohio and California.[2/]

Those CBA "exclusive representatives" are all legally separate from

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[1] Plaintiff discovered Union's practice to limit "membership" by abusing its "certified" control over the CBA job referral procedure as a weapon (with assaults and batteries) go back to World War II when many workers moved to industrialized Michigan and Ohio. Although "non-members" are not allowed to see their CBA, the CBA of an Ohio Union whose "Bargaining Unit" borders on that Michigan "Unit's" shows Davis Bacon Act "prevailing wage rates" are subverted by employers' secret payments to its "union member" workers of up to $5.00 per hour more than non-members in the Bargaining Unit it "represents."

Because construction work and employers are temporary Union negotiates only wage "increases, but with Employers Associations has the Internal Revenue Service certify its "Funds" as *income tax exempt* "Voluntary Employees Beneficiary Associations," and "defers" the same amounts from the wages of non-members (who don't know details, do not agree, are denied a right to vote, and will not work long enough to get a "vested" interest) into the Union Funds as "deferred wages," and "non-members" then also forfeit amounts that would normally be compounded in wages as "overtime pay."

[2] That fourth local union, based in San Mateo, California, agreed to send the majority of the monies - taken from his wages for its "special purpose funds" - to the "special purpose funds" of the local union in Ohio, where the Plaintiff had worked long enough to gain a "vested" interest in his monies "taken" when he worked there, but that Ohio local union then "took" an $8,800.00 lump sum of that money outright by refusing to give him "benefits" for it, and the Sixth Circuit is sanctioning him again for appealing.

each other, as "unions" *per se*, but are also "affiliated" with a separate International Brotherhood of Electrical Workers ("I.B.E.W.") based in Washington, D.C., *via* an "IBEW" constitution "contract."

Plaintiff demanded the three unions return the monies "taken" for ostensible "union dues" (and that they provide him with *agency fees* alternatives), and return other hourly wages the respective unions negotiated as his "exclusive representative." They all refused on grounds construction unions that can take such monies, all do so.

The Michigan district court refused to permit any discovery in that action, despite the two Union Defendants filing their "Answer" to a timely Complaint, and at the behest of "Union Funds'" Defendants quickly granted all the Defendants' F.R.Civ.P. 12(b)(6) motions and motions for summary judgment - after an attorney for the FUNDS sent the presiding judge an *ex parte* letter asking for quick dismissals, because Plaintiff moved to consolidate those three cases before the Judicial Panel on Multidistrict Litigation - and the Michigan court did so in a tortured decision misrepresenting: (1) the Plaintiff is a "member" of the Union; and (2) Defendants are not "state actors."

The California and Ohio district courts then dismissed the two remaining cases by embracing the same two frauds, and on appeal the Sixth Circuit venally embraced a three months late "attorneys fees" award by misrepresenting Plaintiff is an ERISA FUNDS participant.[3]/

But the Ninth Circuit court of appeals, after initially ruling erroneously Plaintiff was a "member" of a San Francisco local union (he applied after seeing LMRA § 158(a)(3) language requiring offers of "membership" in a CBA, but was ignored) **reversed itself, to rule instead he was not a "member," and allow his petition for rehearing** (see addendum exhibits: Ninth Circuit Memorandum; the Order; and IBEW's notice that he is not a Union, or Bargaining Unit "member").

II. STATEMENT OF FACTS ON REHEARING

1. The L.M.R.A. and Labor-Management Reporting and Disclosure Act ("LMRDA") are enacted to stop takings from workers' paychecks,

> "to eliminate or prevent improper practices on the part

[3] The lateness of an abusive district court fees award (made by distorting even the otherwise controlling "*King/Eaves* factors"), and the inappropriate application of such an award (against what even Precedents the district court had pragmatically embraced and distorted by calling him an "ERISA plaintiff") were the subject matter of Case No. 03-224 before this Court, and necessarily - because of underlying "member" (which, if true, would make him subject to "dues," Funds' "takings" and ERISA) and "not state actor" misrepresentations on the merits - also the subject matter of earlier Case 02-920.

> of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the [L.M.R.A.] (1947) as amended, and Railway Labor Act, as amended ...."

See LMRDA § 2 (1959) (29 U.S.C. 401).

2. LMRDA § 3(o) (29 U.S.C. 402) further states,

> "'Member' or 'member in good standing' when used in reference to a labor organization, includes any person who has fulfilled requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with the lawful provisions of the constitution and bylaws of such organization."

3. Plaintiff was never a "member" of Defendant LOCAL No. 58. See IBEW president's notice that he is not a "member" (*infra*, at 15).

4. The I.B.E.W. and local unions that affiliate with I.B.E.W. are all separate, independent unions bound by the contract it calls an I.B.E.W. constitution. *Plumbers and Pipefitters v. Plumbers and Plumbers and Pipefitters, Local 334*, 452 U.S. 615, 624, 101 S.Ct. 2546, 2551, 69 L.Ed.2d 280 (1981); *Wooddell v. I.B.E.W.*, Local 71, 502 U.S. 93, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991).

5. The contract Plaintiff agreed shall bind him as a "member" of the I.B.E.W. and "member" of any separate affiliated local union is also that same Washington, D.C. based I.B.E.W.'s constitution.

6. Plaintiff automatically became a "**member**" of I.B.E.W. when he joined a local union in 1958, and his contract extended to other I.B.E.W. members, **but not to other local unions** (*infra*, at 9-10).

7. The I.B.E.W. constitution provides for a member's transfer from one affiliated local union to other local unions with the same kind of electricians by presenting a traveling card to a transferee local union, and that practice is normal in all local unions except those with construction electricians, and that last group, including Local 58, Local 8, and Local 6, arbitrarily rejects such "traveling cards" because they "take" $million$ of dollars from all such non-members and enforce the "takings" by blacklisting and ostracizing any dissenters, helped by complicit employers, employers associations, and federal courts (they also stole $100,000.00 from Plaintiff), and by ongoing threats, assaults and batteries. See Facts 2, 5-6, *supra*.

8. Plaintiff presented such a traveling card to IBEW Local 6 in San Francisco, but they ignored it, and he knew from experience it was a waste of time, which would provoke assaults and batteries on him there, and in Defendant Local 58, and in Local 8, because he had been assaulted by members of those two unions before (including CEO Duffey of Local 8) and battered by Duffey's cronies, and forced to leave Ohio because of threats of physical violence against him.

9. He is also aware of similar practices in other such unions, including one in San Diego where he got verdicts in two separate cases from two different juries against a union and its officers for such blacklistings, assaults and batteries and for attempts to kill him. See virtually identical acts underlying a different California case that originated in San Francisco. *I.B.E.W., Local 6, AFL-CIO, and Michael Berkowitz, et al.*, 318 N.L.R.B. No.7 (1995).

III. STATEMENT OF THE CASE ON REHEARING

The local unions also had other "dual roles" administering: 1) its special purpose Funds (some Funds are administered "jointly" with the contractors' associations and regulated by the Secretary of Labor); and 2) administering the CBA itself, and CBA "grievance procedures."

None of the unions had "agency fees" provisions in their CBAs, and their officers all depended on their control of a job "referral procedure" to favor its members, and to extort "dues" and "required contributions" from the negotiated wages of non-members. Plaintiff estimated the unions were stealing **one third** of the hourly wages it negotiated for all bargaining unit workers, and after he lost a job and Funds' "takings" because of Local 58's bias towards its members, he demanded that all monies it "took" from his wages be returned.

Local 58 refused to return his money on the ground that it was their turn to take everything they could from non-members like him.

After Plaintiff cited the same cases he cites here, *infra*, the district court insisted he was a "member" of Local 58 - in the face of that definition of "member" Congress inserted in the Labor-Management Reporting and Disclosure Act, § 3(o) (29 U.S.C. 402) (1959) to plug a hole in the LMRA, and to reinforce the stopping of such "takings."

The Complaint was filed on June 13, 2001, and a First Amended Complaint was filed, and served on all Defendants on October 9, 2001.

A first cause of action for violations of the First, and Fifth Amendments by "takings" of monies from the "non-member" Plaintiff's paychecks for Local Union No. 58's "union dues," and special purpose Funds' "required-contributions" (sic) and by refusing to return those monies, or give him the option of paying "agency fees" to Union, was

against all the Defendants, as were the second, third, and fifth causes of action, respectively, for fraud and deceit, breach of contract, and intentional infliction of emotional distress.[4]

The fourth cause of action against Union and its CEO Radjewski was for breaches of their duties of fair representation ("DFR").

A prayer for relief asked for refunds and declarations "takings" are illegal; to stop Union abuse of that fine-print "dues deduction authorization" on the "Bargaining Unit" forms all workers must sign to accept jobs in a CBA hiring hall administered by Union; an order the CBA parties must appoint a neutral party to administer that CBA job referral procedure and hiring hall; and an order declaring that fourth cause of action, for DFR breaches, may instead be presented to a jury as a "breach of contract" claim.

A prayer for injunctive relief also asked to enjoin Union and its Funds: from continuing any "conduct" declared illegal; from all takings of non-members' wages, including dues, until it establishes "agency fees" procedures; and to require the Union and its Funds to notify non-members of the right "to be reimbursed for the years of ill-gotten 'takings.'" Plaintiff also prayed for special damages, punitive damages and such further relief as deemed just and proper.

Union and Radjewski filed their Answer on October 29, 2001 and Plaintiff served his interrogatories and requests for production of documents on them on December 3, 2001.

Funds Defendants filed F.R.Civ.P. 12(b)(6) motions to dismiss, or alternatively for summary judgment on October 29, 2001 supported by Funds administrator Mittelbrun's Affidavit and exhibits, and the Plaintiff responded on November 26, 2001, and included an Affidavit and separate F.R.Civ.P. 56(f) Affidavit. A Funds' December 4, 2001 reply was supported only by another Mittelbrun Affidavit.

Union and Radjewski then filed those same motions supported by Radjewski's "declaration." Plaintiff's December 14, 2001 responses included another F.R.Civ.P. 56(f) Affidavit showing his outstanding discovery requests, which were ignored, and Defendants filed a late Reply and requested a "protective order" against discovery, despite filing an Answer, and Motion for Summary Judgment, which that court granted in a telephone conference allowing them to avoid discovery.

The Funds wrote that judge "to expedite ... a decision ... to

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[4] Plaintiff alleged the "takings" included kickbacks to employers from "overtime pay" equal to Funds' "takings" for deducting the takings from non-members' paychecks for Union Defendants. Exact amounts "taken" are unknown because "non-members" can't even *see* a CBA, and the district court would not allow "discovery."

minimize the continuing costs to defendants," if that Multidistrict Litigation Panel exercised jurisdiction over those three cases, and granted all motions in its Background and Analysis misrepresenting: Plaintiff's "position is directly contrary to the purpose of NLRA § 8(a)(3) as explained by the *Beck* Court"; and his "takings" claims are factually and legally without merit because Defendants are "private parties"; and concluding: "the limitation that [LMRA] § [15]8(a)(3) places on uses of non-member dues is simply not implicated here" by admitting personal attacks on him are for "insist[ing] ... Local 58 had 'no right' to deduct dues from his wages or other non-members"; and by self-servingly insisting he acted only "out of retaliation."[5/]

Plaintiff moved to vacate that Judgment (providing evidence of Union and National Electrical Benefit Fund ($50 million) "political spendings"), but was dishonestly rejected there, and on appeal.

That court also argued benefits from a 1998 job Union took from him would not be "lost" if he timely submitted a "reciprocity form" for the single week before Union "took" his job for its "members".[6/]

IV. REASONS FOR GRANTING THE WRIT

A. This Court can reach back to review approval of union defendants' "takings" from a nonmember's wages without notice, due process or jurisdiction, which, with a fees award, overstepped boundaries of accepted procedure, departed from usual courses of judicial proceedings, and conflicted with applicable decisions by this Court and by the Fourth and Ninth Circuit appeals courts, all of which require exercise of this Court's powers of supervision.

On November 20, 2003 the Ninth Circuit court of appeals, which previously affirmed a lower court ruling Plaintiff is a "member" of San Francisco Local Union No. 6, reversed itself *sua sponte*, and is now reviewing a Petition for Rehearing (with *en banc* suggestion) on the

[5] All Plaintiff's affidavits showed Defendants' "political" and "organizing" (like *Beck*) spendings, but the court mis-stated: he tried to "avoid ... overtime 'arrangements'"; "dues" claims are unsubstantiated"; Funds' "takings" were employers' "contributions"; and his "union dues" related claims are unsustainable.

[6] In 1998 General Motors locked everyone out prior to a strike and Plaintiff was offered an alternate job by his employer, but Radjewski refused to let Union non-members be transferred, promising preference in re-hiring instead," but reneged, forcing Plaintiff to leave before he signed forms reciprocating less than half Union Funds' "takings" to the Ohio union that stole the $8,800.00 lump-sum he had sent to it from California.

remaining issue of whether the union, "certified" by a National Labor Relations Board as Exclusive Representative of the employees/ beneficiaries in a CBA "Bargaining Unit," is a "state actor."

An underlying issue is whether such unions are subverting this Court's "body of labor law" authorized by Congress - in passing the Labor Management Relations Act (1947)(29 U.S.C. § 186), a Paycheck Protection Law, to nullify the "compulsory union" takings under the Wagner Act - by refusing to include "agency fee" provisions in CBAs they administered as federally-certified "exclusive representative" of all employees, and instead abuse the CBA's hiring hall to "take" wages from *non-members* deprived of both union *membership*, and *agency fees* alternatives. *See Mercer v. Theriot*, 377 U.S. 152, 153-154 (1964); *see also Hughes Tool Co. v. Trans World Airlines*, 409 U.S. 363, 365, n.1 (1973) (a prior denial of *certiorari* is not *res judicata* on raised points); *see also Indianapolis v. Chase National Bank*, 314 U.S. 63, 74 (1941); *Washington v. Washington State Fishing Vessel Association*, 443 U.S. 658, 672, n.19 (1979).

B. L.M.R.A. "Exclusive Representative" Unions are "state actors," and Plaintiff is entitled to "access" the Court.

A Sixth Circuit's xenophobic personal attacks on the Plaintiff for a supposed "long history of litigating claims against *his* [sic] union and its locals" overlooks the fact that he prevailed in those cases that were given to juries, and did not prevail is others only because judges insisted those causes of action were "disfavored" by this Court, and begged questions: whether "members" have a right to meaningfully challenge overweening "unions," which are creatures of a federal judiciary that mitigates the laws passed by Congress, and whether "local unions" are not legally separate from "international unions" they may be "affiliated" with.

While that court's frustration at the Supreme Court's reversal, in *Wooddell v. I.B.E.W., Local 71*, 502 U.S. 93, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991), of its class-warfare decision resonates in both an instant Order, and in other orders filed to protect unions' wrongful "takings" of non-members' property, *stare decisis*, however, implies that the I.B.E.W. is independent and separate from Defendant Union, and it and two other unions in Ohio and California are independent, and separate from each other. *Id.*; *Plumbers and Pipefitters v. Plumbers and Plumbers and Pipefitters, Local 334*, 452 U.S. 615, 624, 101 S.Ct. 2546, 2551, 69 L.Ed.2d 280 (1981).

Defendant Union also uses its "takings" from "non-members" to

defend such "unconstitutional" wrongdoings, indicating such spoils must be well worth defending, but that is not the bottom line in its "defenses" (see Facts 1, 2, 8, and 9, *supra*). Such takings evolved from "compulsory unionism" under a "Railway Labor Act," and a later "National Labor Relations Act" (Wagner Act) by giving unions rights to charge all employees "union dues" and other "takings," in return for agreements to "collectively bargain," and forego "strikes" that affect "interstate commerce" adversely.

The LMRA and LMRDA were both passed to "compromise" the venality of organized crime's subsequent filling of that void left by departing idealists and revolutionaries and the law now is that the Court has agreed with Congress that the "new unions" may "take" only fair share "agency fees" from non-members like Plaintiff if union "membership" is *offered and refused* pursuant to LMRA § 158(f).

The arrangements do not provide for unions that "collectively bargain," while refusing to stop illegal "compulsory union" abuses.

The Detroit lower court, and Sixth Circuit are still in denial over *Wooddell v. I.B.E.W. Local 71*, as showed by arbitrary equating of the I.B.E.W. with the Detroit local union, to beg a "membership" question invalidly, and they are also in denial over *Communication Workers of America v. Beck*, 487 U.S. 735, 198 S. Ct. 2641, 101 L. Ed.2d 634 (1988) ("exactions" from the wages of workers for nonrepresentational purposes, if those workers are not members of the union certified under the L.M.R.A. as workers' "exclusive representative" for "collective bargaining" purposes, violates both the First and Fifth Amendments and a union's duty of fair representation, *citing Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961)). *See also Beck v. Communications Workers of America*, 468 F.Supp. 93 (D.Md. 1979) (*quoting Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)); *aff'd*, 776 F. 2d 1187 (4th Cir. 1985); *aff'd en banc*, 800 F.2d 1280 (1986).

The Supreme Court further commented that "takings" from non-members, whether called "assessments," "dues," or for that union's "special purpose funds" (there a Credit Union or Building Fund) may not be taken from nonmembers because,

> "[O]bviously, once ... determined that the dues were not for collective bargaining purposes [or] 'for the maintenance of the [union] as an organization' [Funds] could be terminated without affecting the continued existence of [the union] as the bargaining representative."

Id., 487 U.S. 735, at 752, n.7, 108 S.Ct. at 2652-53, n.7.

This Court also specifically rejected "arguments" embraced by district court that the LMRA "intended to permit the collection and use of full union dues" from non-members. As this Court reasoned,

> "We conclude [LMRA] § [15]8(a)(3) ... authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of [union nonmember] employees in dealing with the employer on labor-management issues.'"

Ibid, 487 U.S. 735, 756-763, at 762-63.

Political decisions that such unions are not "state actors" by lower courts place toll-gates across the doors of federal courts in violation of Article 4, § 2, ¶ 1 of the Constitution, guarantying two "fundamental principles ... of controlling effect,"

> The right to sue and defend ... is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed.

Chambers v. Baltimore and Ohio Railroad Co., 207 U.S. 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143 (1907). (Citations omitted.) Plaintiff is a Bargaining Unit worker and Defendant Union is a "state actor."

C. Plaintiff was never a "member" of Defendant Union, he never agreed to participate in any Union "special purpose Fund," which must be approved by the I.R.S. as "Voluntary Employees Beneficiary Associations" before that Union may even solicit Union members to defer their wages into such "income tax-exempt" entities, but he was never solicited.

The bedrock of district court's dismissal of Plaintiff's suit to recover his property, and of a Sixth Circuit's "Order" affirming that dismissal, depended on the two courts' erroneous definition of "member" to justify Union "takings."

The I.B.E.W.'s "constitution" contract with the "local unions" it "affiliates" with states, at Article 20,

> Sec. 1. No L[ocal] U[nion] can admit an applicant who does not reside in, or who is not employed at the trade, in the jurisdiction of the L.U., unless the L.U. is directed to admit him by the International President.
>
> * * *
>
> Sec. 3. Acceptance of an application for member-

> ship, and admission of the applicant into any L.U. of the I.B.E.W. constitutes a contract between a member, the L.U. and I.B.E.W., and between such member and all other members of the I.B.E.W.

Thus the "contract" between a member, "his" union and the I.B.E.W. and all other I.B.E.W. members (which exclusively controls all "membership") specifically excludes such a contract with any foreign local union he was not accepted into. While the contract provides for "transfers" of "membership" between local unions, a transferee union must first pre-approve any such transfer.

Defendant Union should be limited to the very liberal options provided by the federal courts' scheme for labor peace in "taking" non-members property, and be required to consider CBA "agency fees" as an alternative to illegal takings, or change the I.B.E.W. constitution to permit "transfers" of membership without a pre-approval.

Defendant Union may of course get "agency fees" to pay for its costs of collective bargaining, of CBA administration and grievance adjustment from all electricians working under *any* CBA and (subject to federal courts' decisions related to such "fees") to allow Union to defend itself against those dreaded, and mythical "free riders." *See C.W.A. v. Beck*, 487 S.Ct. 1641, at 2650-51.

But in order to do so it would have to act within existing law providing construction electricians who are not "members" with that alternative of paying only their fair share "agency fees," or allow those who belong to other separate local unions affiliated with the I.B.E.W. to "transfer" their membership to Defendant Union pursuant to existing provisions that are already part of the I.B.E.W. constitution, and used unconditionally by all other classifications of IBEW members.[7/]

Further, the thieving instant Defendant Union, and its allies, who were fortunate enough to exist in areas which enjoyed the "boom and bust" cycles of the American economy, have had a fifty-six (56) year window of illegal "takings" from non-members amounting to many $Billions$, after such "compulsory unionism" abuses were supposedly ended by passage of the L.M.R.A. (The Paycheck Protection Law.) *Id.*

While lower courts prefer to frame issues before them in terms of union "membership" the issues actually concern rights and duties under our "social-contract" Constitution, and an I.B.E.W. contract.

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[7] There are at least forty (40) classifications of other electrical workers in the I.B.E.W. who universally transfer their 'membership" between affiliated local unions which cover the same classifications, including construction linemen who bring electricity to the house where the construction electricians do their work.

ADDENDUM OF EXHIBITS

EXHIBIT A (MEMORANDUM filed May 5, 1999 by the Ninth Circuit finding Plaintiff is a "member" of a Local Union No. 6 Appellee) 12

Exhibit B (ORDER filed December 20, 2003 by the Ninth Circuit finding Plaintiff is not a "member" of Local Union No. 6) 14

Exhibit C (NOTICE by Intern'l Brotherhood of Electrical Workers president to all I.B.E.W. members working in "Bargaining Units" where they are not members of a local union "certified" under federal law as their "exclusive representative" they are not entitled to a voice or a vote at that local union's meetings or in internal union elections, **and also not entitled to a voice or vote on collective bargaining agreements that they work under**, or any other issue) 14

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Lawrence Moore, Plaintiff/Appellant,	)	No. 02-16485
v.	)	D.C. # CV-01-03733
Int. B'hood of Elect. Wkrs. Local 6, *et al*, Defendants/Appellees	)	MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Filed August 7, 2003

Before: CHOY, FARRIS and LEAVY, Circuit Judges.

Lawrence Moore, proceeding pro se, appeals the judgment of the district court granting summary judgment to defendants. We have jurisdiction pursuant to 28 U.S.C. § 1291, and, upon de novo review, we affirm. Because the parties are familiar with the factual and procedural history of this case, we need not recount it here.

Moore asserts that the district court erred in dismissing his claims that the defendants violated the First and Fifth Amendments to the United States Constitution. The district court did not err in concluding that the defendant union and its individual officials are not state actors. Therefore, Moore's claims alleging constitutional violations are not actionable. Lugar v. Edmondson Oil Co., 457 U.S. 922, 936-37 (1982).

Moore asserts that the district court erred in dismissing his claims against individual union officers for breach of contract and breach of duty of fair representation pursuant to § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. The district court did not err in concluding that § 301 provides the basis for an action for breach of contract or breach of duty of fair representation only against a union as an entity. See Carter v. Smith Food King, 765 F.2d 916, 920-21 (9th Cir. 1985).

Moore asserts that the district court erred in dismissing his claims for fraud and intentional infliction of emotional distress. The district

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2).

court did not err in concluding that Moore's claims were state law claims which are preempted by § 310 of the LMRA. See id, at 921.

Moore asserts that the district court erred in granting summary judgment for Local 6 on Moore's claims for breach of contract and breach of the duty of fair representation. Moore argues that Local 6 breached the IBEW constitution and the collective bargaining agreement by taking dues and pay from Moore, but not giving him a voice or vote on how those funds are spent. The district court did not err in determining that Moore did not state a claim as a union nonmember under Communication Workers of America v. Beck, 487 U.S. 735 (1988). Moore is a voluntary, longtime union member of International Brotherhood of Electrical Workers ("IBEW"). Moore worked for period of time through Local 6 of the IBEW in San Francisco, but did become a member of that local. However, at all times, Moore remained a member of IBEW. As such, he is not a "nonmember" similar to the nonunion employee plaintiffs in Beck.

Moore has also failed to state a claim for violation of the union's constitution under Woodell v. IBEW, Local 71, 502 U.S. 93 (1991). The IBEW constitution sets forth specific provisions regarding the rights and duties of a union member working in a different local union. Moore has failed to show that the IBEW constitution was violated regarding his choice to work through Local 6 in 1998 and 2000.

Both the breach of duty of fair representation and breach of contract claims are governed by the six-month statute of limitations period in § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). See Moore v. Local 569 of the IBEW, 989 F.2d 1534, 1542 (9th Cir. 1993). Moore worked through Local 6 in May and June 1998, and in March and April 2000. Moore should have known of any breach of the duty of fair representation or breach of contract when he completed work through Local 6 ending in April 2000. Moore filed his complaint in October 2001. Therefore, claims for breach of contract and breach of duty of fair representation are, in any event, time-barred.

Moore asserts that the district court erred in denying him additional discovery pursuant to Fed.R.Civ.P. 56(f). The district court did not err in concluding that Moore's request for additional discovery would not shed any light on Moore's legal claims or uncover facts precluding summary judgment. United States Cellular Investment Company of Los Angeles, Inc. v. GTE Mobilnet, Inc., 281 F.3d 929, 939 (9th Cir. 2002).

We have considered Moore's remaining arguments and find them to be without merit.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Lawrence Moore, Plaintiff/Appellant,	)	No. 02-16485
	)	D.C. # CV-01-03733
v.	)	Northern District of California, San Francisco
Int. B'hood of Elect. Wkrs. Local 6, *et al*, Defendants/Appellees	)	ORDER

Before CHOY, FARRIS, and LEAVY, Circuit Judges.

The Memorandum disposition filed on August 7, 2003, is amended as follows: on page 3, paragraph 1, line 10 should read: "... but did not become a member of that local ...."

FILED: OCT 07, 2003

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
1125 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 833-7000

TO: ALL IBEW LOCAL UNIONS IN THE
UNITED STATES AND CANADA

Dear Sisters and Brothers:

Some questions have recently arisen about the meaning of the amendment of Article XXIV, Section 1 of the IBEW Constitution at the 1996 Convention. The purpose of this letter is to provide you with my interpretation, pursuant to my authority under Article IV, Section 3(2), of the IBEW Constitution, of the meaning of Article XXIV, Section 1. I want to make certain that there is a uniform interpretation and application of this provision throughout the Brotherhood.

The old Article XXIV, Section 1, had the same rule for a member traveling, or visiting, a Local Union; and said that both *"shall"* be admitted to its meetings. The clear intent of the amendment offered by

Local Union 1049 was to change the *"shall"* to *"may"* and specify that both the traveling and visiting member would have no voice or vote. Under the substitute resolution submitted by the Law Committee, there are separate provisions for members working in a different Local's jurisdiction and a member visiting a different Local.

With respect to the *visiting* member, the new language clearly states that he or she "may" be admitted to the meeting - at the option of the Local union in question - but without voice or vote. Under the amendment, a member *working* in a different Local's jurisdiction *"shall"* be admitted to its meeting (*as under this provision before the amendment*), but that paragraph is silent with respect to whether the traveling member has a voice or vote.

Based on the language of the amendment, offered by Local Union 1049, and the essence of the discussion during the debate on the amendment, it is my interpretation that although the traveling member has the right to attend a Local Union meeting, he does so without voice or vote.
(Several erroneous statements made during the debate about legal requirements are likely to have confused the issue, and it is in part for that reason that I find it necessary to provide this interpretation of the new provision.)

In sum, Article XXIV, Section 1, is interpreted as follows:

1. A *traveling* member working in another Local union's jurisdiction *shall* be admitted to its meetings. He is not, however, a member of the second Local Union because of this amendment. Nor is he entitled to voice or vote on collective bargaining agreements or any other issues, and he most certainly is not eligible to vote in internal elections within that Local Union.

In other words, there are no rights granted to the traveler other than having the right to attend the Local union meeting. As noted above, the intent of the two paragraphs in this section is only to distinguish between a traveling member employed in the Local union's jurisdiction and a visiting member not employed in the Local union's jurisdiction.

2. When a member wishes to *visit* a different Local Union, that Local Union *may* - but is not required to - admit that member to its meetings. The visiting member has no voice or vote at the meeting.

Best wishes.

Fraternally yours,
J.J. Barry, International President

CASE NO. 03-224 (02-920)

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2003

LAWRENCE MOORE,

Petitioner,

v.

LOCAL UNION NO. 58, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; LOCAL 58 ANNUITY FUND; LOCAL 58 PENSION TRUST; LOCAL 58 HEALTH WELFARE TRUST; LOCAL 58 TRAINING TRUST; LABOR-MANAGEMENT CO-OP FUND; LOCAL 58 SUB PAY FUND; LOCAL 58 VACATION PAY FUND; JEFF RADJEWSKI; ELECTRICAL WORKERS JOINT BOARD OF TRUSTEES; THOMAS MITTELBRUN; NATIONAL ELECTRICAL BENEFIT FUND; and NATIONAL ELECTRICAL ANNUITY FUND,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CERTIFICATION THAT THIS PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH, AND NOT FOR DELAY.

Lawrence Moore, *Pro Se*
P.O. Box 13543
La Jolla, CA 92039-3543
Ph. (858) 452-9537

I certify that this Petition for Rehearing is presented in good faith, and not for delay (which serves only the interests of the Union and Union Funds thieves).

This Court should have granted the underlying Petitions for Writ of Certiorari No. 02-920 and 03-224 to the Sixth Circuit court of appeals: *on whether* a union and its special purpose funds may be permitted to "take" my personal property (money earned as wages) without notice, due process, or a hearing; *and on whether* attorneys' fees and/or sanctions may be awarded against me for appealing to the doctrine of *stare decisis* - which included supporting decisions by this Supreme Court and the Fourth Circuit court of appeals as authorities for suing for the return of my property - especially since the district court ignored the existing, controlling authorities on the "takings" issue *per se*, and deliberately distorted both the underlying facts, and earlier case-law holdings to award attorneys fees against me (for trying to recover my property).

I was deprived of my property in violation of the First and Fifth Amendments to the Constitution by the decisions of that district court, but since the Ninth Circuit has now reversed itself on "one" of the "two" red herrings used by three district courts where I had earned those monies (Detroit, Toledo, and San Francisco), I am now asking this Court to re-hear those earlier two Petitions in light of that Ninth Circuit reversal, and I certify that this instant petition for rehearing, as well as my complaints, appeals, and petitions for writs of certiorari, are presented only in attempts to recover my property, and that I presented them in good faith, together with my certification that I do not do so for the purpose of any delay.

Dated: 12-19-03

Lawrence Moore

Lawrence Moore